

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.17756 OF 2007

M/s Garib Nawaz Corporation ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

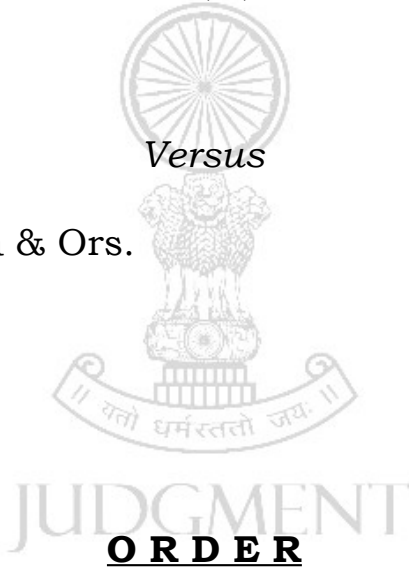
WITH

SPECIAL LEAVE PETITION (C) Nos.4323-4324 OF 2008

Anees Ahmed ... Petitioner

Versus

Subhash R. Acharya & Ors. ... Respondents



A. K. PATNAIK, J.

These special leave petitions under Article 136 of the Constitution are directed against the judgment and order dated 16.08.2007 of the Division Bench of the Bombay High Court in Writ Petition No. 580 of 2007.

2. The relevant facts very briefly are that on 30.12.2001 the Chief Executive Officer, Aarey Milk Colony, Goregaon (East), Mumbai (respondent no.4) invited tenders for recovery of toll from private vehicles making use of the Aarey Road at the three check posts at Goregaon, Marol and Powai of Aarey Milk Colony and amongst the tenderers, M/s Garib Nawaz Corporation was awarded the contract on 16.02.2002. Accordingly, an agreement was executed between M/s Garib Nawaz Corporation on the one hand and Government of Maharashtra and the Chief Executive Officer, Aarey Milk Vasahat, Goregaon (E), Mumbai, on the other hand. Under the agreement, M/s Garib Nawaz Corporation was to collect toll from private vehicles entering into the Aarey Milk Vasahat at the three check posts and deposit with the Government a sum of Rs.16,58,00,000/- for three years from 16.02.2005. Under the agreement, M/s Garib Nawaz Corporation was also to deposit 5% of the aforesaid amount as security deposit which worked out to Rs.82,90,000/-. Condition No.5 of the agreement further provided that if the contractor is unable to carry out the contract, the contract will be cancelled and the

security deposit amount will not be refunded to the contractor and if a new contractor is appointed for the work for a lesser amount, the differential amount will be recovered by the Government as a loss out of the security deposit amount. Pursuant to the agreement, M/s Garib Nawaz Corporation carried out the work of recovering tolls from private vehicles for a period of three years and on expiry of the period of three years, was granted extension for a further period of three years from 17.02.2005 on the same terms and conditions with two modifications. The royalty was increased by 5% and condition no.5 was relaxed. Shri Subhash R. Acharya, respondent in the two special leave petitions, challenged the extension of three years granted to M/s Garib Nawaz Corporation in Writ Petition No. 580 of 2007 before the Bombay High Court contending *inter alia* that the orders of the authorities granting the extension for three years to M/s Garib Nawaz Corporation to collect toll and relaxing condition no.5 of the agreement were clearly arbitrary and had caused a huge loss to the State exchequer.

3. After considering the allegations in the Writ Petition and the replies filed by the respondents to the Writ Petition, the High Court found in the impugned judgment and order that the orders to grant the extension of the contract for a further period of three years with an enhancement of royalty payable by 5% and to waive Condition no.5 of the agreement were taken by Shri Anees Ahmed, the then Minister for Dairy Development, Agriculture and Animal Husbandry, Government of Maharashtra, respondent no.6 in the Writ Petition. The High Court further held in the impugned judgment and order that orders appeared to be abuses of power and offended the basic norms of public authority and public accountability relating to performance of public duty. The High Court accordingly quashed the order dated 21.08.2004 granting extension of the contract to M/s Garib Nawaz Corporation and directed the State to invite fresh tenders for collection of tolls at the three check posts at Goregaon, Marol and Powai of Aarey Milk Colony. In the impugned judgment and order, the High Court further directed the State of Maharashtra to appoint a Committee to determine the loss caused to the State

exchequer as a result of waiver of Condition no.5 of the original contract as well as from the order granting extension for a period of three years to M/s Garib Nawaz Corporation and further directed that this Committee shall compute the loss for the period of extension, i.e. from 17.02.2005 till the passing of the impugned judgment and order by the High Court. The High Court further directed in the impugned judgment and order that the loss determined by the Committee for the extended period shall be recovered from M/s Garib Nawaz Corporation and the loss suffered by the State on account of deletion of Condition no.5 of the original contract, as determined by the Committee, shall be recovered from Shri Anees Ahmed, the then Minister for Dairy Development, Agriculture and Animal Husbandry. The High Court also directed that the State will ensure that no such extension of contracts is granted by its various departments and instrumentalities in future, except for valid reasons recorded in writing.

4. Aggrieved by these directions in the impugned judgment and order of the Division Bench of the High Court, M/s Garib

Nawaz Corporation and Shri Anees Ahmed, the Minister, have filed the two special leave petitions. On 01.10.2007, this Court while issuing notice in S.L.P. (C) No.17756 of 2007 directed that in the meantime if a Committee is constituted pursuant to the directions of the impugned judgment and order of the High Court, the Committee may continue with the enquiry but no amount shall be recovered from the petitioner.

5. During the pendency of the special leave petitions, the State of Maharashtra constituted a Committee, as directed in the impugned judgment and order, comprising Dr. Pradeep Vyas, Secretary (Expenditure), Finance Department, as the Chairman; Mr. M. N. Gilani, Principal Secretary & PLA, L & J Department, and Mr. Rajesh Aggarwal, Secretary, Animal Husbandry, Dairy & Fisheries Department, as Members and Mr. S.V.R. Srinivas, Dairy Development Commissioner, as Member Secretary and this Committee has submitted its report dated 20.07.2009, which is annexed to the application for permission to file additional documents on record filed in S.L.P. (C) No.17756 of 2007 as Annexure A-2. Paragraph 15 of the report of the Committee is extracted hereinbelow:

“15. Based on above, it is seen that though in the tender floated on 13th July, 2007 the rates received were higher compared to amount being received by the Government from the extended contract period of M/s Garib Nawaz Corporation, but the higher bidders did not continue with the contract for long and discontinued the same in 19 days (M/s Shrikrishna Khandsari Sugar Mills, Nandurbar) and 169 days (M/s Vipul Octroi Center) and the collection by the CEO, Aarey, was on an average Rs.1,33,702 and Rs.1,27,165 and paise 64 per day respectively, which is less than the rate which was being paid by M/s Garib Nawaz Corporation at Rs.1,58,987/- during the extended period. The present toll collection rate as per the contract awarded to M/s Kohinoor Enterprises, Kurla, is Rs.1,43,836 and paise 33 per day. So the Committee feels there is no material on record to indicate that the loss has been caused to the State exchequer from the order granting extension for a period of three years to M/s Garib Nawaz Corporation (Paragraph 34(iii) of High Court Order in W. P. No. 580 of 2007 dated 16.08.2007).”

6. It will be clear from Paragraph 15 of the report of the Committee constituted pursuant to the directions in the impugned judgment and order of the High Court that there was no material before the Committee to show that any loss has been caused to the State exchequer from the order granting extension for a period of three years to M/s Garib Nawaj Corporation. Hence, no loss was to be recovered

from the security deposit of M/s Garib Nawaz Corporation in accordance with Condition no.5 of the original contract which was waived by Shri Anees Ahmed, the Minister for Dairy Development, Agriculture and Animal Husbandry, while granting extension to M/s Garib Nawaz Corporation. Thus, the directions in the impugned judgment and order for recovery of loss, if any, determined by the Committee from the two petitioners, M/s Garib Nawaz Corporation and Shri Anees Ahmed, have not ultimately affected the said two petitioners. The remaining directions in the impugned judgment and order of the High Court to the authorities to issue fresh tenders for recovery of toll from private vehicles at the three check posts of Aarey Milk Colony and not to grant extensions in future, except for reasons to be recorded in writing, do not affect the two petitioners and are meant to ensure that no loss is caused to the public exchequer in future by grant of extensions. For these reasons, we are not inclined to interfere with the impugned judgment and order of the High Court.

The Special Leave Petitions stand disposed of with no order as to costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
December 06, 2010.